

APPEAL NO. 041751
FILED SEPTEMBER 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 27, 2004, with the record closing on June 17, 2004. The hearing officer determined that the respondent (claimant) did sustain a compensable injury on _____, and that the claimant had disability from _____, continuing to the date of the CCH. The appellant (carrier) appealed, arguing that the disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The carrier also contends that the hearing officer erred when she admitted Dr. N report into evidence. The claimant responds, urging affirmance and contends that the hearing officer did not err in reopening the record to admit Dr. N's report.

DECISION

Affirmed.

We first address the carrier's evidentiary objection. The record reflects that the hearing officer ordered the hearing to be reopened for the admission of Dr. N's May 25, 2004, report. The carrier asserts that the hearing officer erred in admitting Dr. N's report. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that the error was reasonably calculated to cause and probably did cause rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We conclude that the carrier has not shown that the error, if any, in the admission of the complained-of evidence amounted to reversible error.

The parties stipulated that the claimant sustained a compensable injury on _____. The only disputed issue was whether the claimant had disability. The claimant had the burden to prove that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant had disability from _____, continuing to the date of the CCH is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Veronica L. Ruberto
Appeals Judge